IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1417

WELFORD WIGLESWORTH, JR.,

Petitioner,

V.

TEAMSTERS LOCAL UNION NO. 592, et al.,

Respondents',

RESPONDENTS' BRIEF IN OPPOSITION

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This lawsuit concerns plaintiff's complaint that at two monthly union meetings in September and October, 1974, plaintiff was not permitted to express himself as a union member because the union President, defendant Hodson, ruled him out of order or limited his amount of speaking time. The District Court found that prior to instituting his lawsuit, plaintiff did not seek relief through available administrative union procedures. This finding is uncontested. In its findings stated

from the bench, the District Court framed the sole issue as being "whether or not this Plaintiff behaved reasonably in by-passing the internal relief provisions of the Constitution and bylaws of his Union."

The primary thrust of plaintiff's Petition (at page 7) is that the Fourth Circuit has departed from the "general rule of law that where a union has taken a position in opposition to that of a plaintiff and makes no indications that it will alter its views, a plaintiff need not exhaust his union remedies" under 29 U.S.C. Sec. 411(a)(4). There has been no departure by the Fourth Circuit from any general rule of law.

The record shows, and the Fourth Circuit so stated, that plaintiff "has not been expelled or suspended from the union, and his complaint, at best, charges departures from the basic rules of orderly, democratic, parliamentary procedures by the president of the local union." In this respect, the Fourth Circuit cites Harris v. International Longshoremen's Asso., Local 1291, 321 F. 2d 801, 805 (3 Cir. 1963), the case which is closest factually to the case at bar, in holding that plaintiff should first have exhausted his available union remedies before instituting his lawsuit.

The cases cited by plaintiff are far afield from the issue at hand. Stated another way, the issue at hand is whether the L.M.R.D.A. is an open invitation to union members, dissatisfied by the conduct of a union meeting by a union officer, to bring suit in federal court against the union and its officer without so much as first attempting to utilize available

union administrative remedies to resolve the dispute. The obvious result of such a specious open invitation is to place the union and its officers in the financial jeopardy of a lawsuit at every union meeting where a member believes that parliamentary rules were not properly administered. In this perspective, parliamentary rules could not safely be applied by the union and its officers in the absence of an all-out, full scale riot at the union meeting. The rash of litigation and the position that federal courts would be placed in is succinctly stated by the Fourth Circuit in its opinion:

> "It occurs to us that it would be both unwarranted and unwise in a case such as this for the court to freely assume the position of post-parliamentarian for a local union meeting without first requiring exhaustion on the part of the plaintiff."

As the evidence showed and the Fourth Circuit so stated, there was a deep and longstanding hostility between plaintiff and defendant Hodson who were union political rivals. Plaintiff ran against Hodson for the office of union President on two occasions, unsuccessfully, each time finishing last in a field of three. The Fourth Circuit further noted the conflicting testimony at trial of members of the union who "differed as to whether Wiglesworth was given a fair opportunity to speak at the two meetings." A resolution of this difference by the trial court, before any available union administrative remedies have been utilized indeed, before there has even been an attempt to utilize them (as here), makes the District Court a post-parliamentarian in perpetual

standby status for each and every union meeting held.

As reflected above, the cases cited by plaintiff are factually inapposite and far afield from the issue at hand. Thus, for example, in Farowitz, the plaintiff had been disciplined and expelled from union membership. Administrative remedies would have been futile because the union in that case had "consistently taken a position contrary to Farowitz' and indeed has been asserting its position in litigation since March 1960." 330 F. 2d 999, 1003. Plaintiff simply argues, in footnote fashion and with no support in the record, that the Fourth Circuit "disregarded the power structure of the Teamsters and the fact that those in power are potent dictators whose influence is far reaching." Acceptance of this premise, for any union, is tantamount to judicial nullification of the statutory exhaustion requirements set forth in 29 U.S.C. Sec. 411(a)(4). Indeed, even the District Court found that most of the time the defendant union represented plaintiff with results favorable to plaintiff in the numerous disputes plaintiff had with his employer.

The District Court relied, however, on its finding that in the union election of 1972, when plaintiff ran for office in a field of three that included defendant Hodson, who at that time was (but who is no longer) union President, "the President of the International Union, Mr. Fitzsimmons, was appealed to in the course of those disputes, and the undisputed evidence is that the President refused to respond in any way to Plaintiff's entreaties." The District Court also criticized

International Union witness Campbell for testifying in part that in connection with the 1972 election, he had not been summonsed by plaintiff in accordance with established procedures. Bearing in mind that the 1972 union election was not the subject of plaintiff's complaint, but rather, only the parliamentary procedures employed at the two monthly union meetings held in September and October of 1974, almost two years later, the improper usage of this evidence by the District Court to avoid the exhaustion requirement becomes apparent. That the District Court was wrong, on the record, is borne out by plaintiff's exhibit number 8, appearing at page 033 in the exhibit volume to the appendix of the printed record in the Fourth Circuit.

That exhibit is a determination by the Department of Labor dated July 11, 1973, which recites the following:

1. The local union election was held on December 9 and 10, 1972.

2. Plaintiff complained to the Secretary of Labor in late March, 1973.

3. Upon initiation of the investigation by the Labor Department, the local union agreed to conduct new nominations and a new election, under the supervision of the Secretary of Labor.

4. The rerun election was completed on June 29, 1973.

5. There was probable cause to believe that violations of Title IV of the LMRDA had occurred in the original election of December 9 and 10, 1972, but the violations were remedied by the nominations and election completed on June 29, 1973, under the supervision of the Secretary of Labor.

The record shows that plaintiff finished third (last) in the Labor Department rerun election. At trial, plaintiff specifically testified that the Department of Labor was dishonest.

The District Court assumed that plaintiff's union appeal in the 1972 election was ignored. The assumption was not justified. To the contrary, the record in the Fourth Circuit shows, at joint appendix pages 308, 357-358, that in the 1972 union election in which plaintiff was a candidate for office, plaintiff utilized union remedies on the local and International level to obtain access to union records, and received satisfaction at both levels. This record referred to comes from the trial testimony of plaintiff, himself. Further, the local union had some 2,800 members, and during the union administrative election appeal process initiated by plaintiff, the union concluded, after plaintiff complained to the Secretary of Labor before the union appeal process had a chance to be completed, that it would be more practical and less expensive to consent to a Labor Department rerun election. Thus, the disputed election was held on December 9 and 10, 1972; plaintiff appealed to the International thereafter; his complaint was received by the Labor Department on March 26, 1973, less than four months after the disputed election; the local union agreed to a rerun election shortly thereafter; and the rerun election was completed (as well as the re-nominations) by June 29, 1973. Plaintiff had

thus received full relief on his complaint over a difficult and complex election process, involving some 2,800 members, in less than seven months through the cooperation of the local union.

Other cases cited by plaintiff are factually inapposite. Amalgamated Clothing Workers, indeed, concluded that exhaustion was required, citing the Harris case upon which the Fourth Circuit relied in its opinion. 473 F. 2d 1303, 1308. In Semancik, 466 F. 2d at 151, the court observed that "the (union) appeal structure gave little hope of providing the plaintiffs (threatened with union discipline of fines, suspension, or expulsion from union membership) with an impartial forum ...." So, too, in Fulton Lodge, 415 F. 2d 212, 216, the court stated that "the union is the victim of its own appellate review structure." In Fulton, the plaintiff had been expelled from union membership. So, too, in Verville the union sought to discipline the plaintiffs for crossing a picket line; in McGraw, the plaintiff was fined by the union and suspended from membership; in Ryan the plaintiff was expelled from union membership; and in Retail Clerks, plaintiffs were fired by the union from their paid jobs as union Organizing Directors after they had opposed, during the union election, the eventual winner thereof. Also noteworthy in McGraw is the trial court's finding that plaintiff in that case "had resorted to the internal union hearing procedures and that more than four months (pursuant to 29 U.S.C. Sec. 411(a)(4)) had elapsed from the date of the hearing before the Local Union Executive Board before the present action was filed." 341 F. 2d at 711.

Thus, the cases cited by plaintiff involve fines, suspension, expulsion from union membership or loss of union jobs, and in its opinion the Fourth Circuit specifically notes the absence of any of these elements in the case at bar, and the resulting inapplicability of the doctrine of voidness in the Fourth Circuit's Eisman precedent. As the Fourth Circuit correctly observed, plaintiff's "complaint, at best, charges departures from the basic rules of orderly, democratic, parliamentary procedures by the president of the local union" at two union meetings. In concluding, based on solid evidence in the record (including not only the union constitution and bylaws, but the testimony of plaintiff's own witness, French), that there were adequate and available union administrative remedies which plaintiff should have utilized first, the Fourth Circuit was likewise on solid ground in giving some meaning to the language and wisdom behind the exhaustion requirement of 29 U.S.C. Sec. 411(a)(4). Unlike cases cited by plaintiff, the record shows (including the testimony of plaintiff's own witness, French) that impartial union forums were available to plaintiff within the statutory four-month framework. The Fourth Circuit reasoned against plaintiff's argued role for the federal courts to act as perpetual standby post-parliamentarians for union meetings, nullifying utilization of available union administrative remedies. The Fourth Circuit correctly stated that the District Court's "out-of-hand rejection of these internal procedures flies in the face of the philosophy underlying the LMRDA." This rejection by the District Court, both on the evidence and the law as well, was clearly erroneous.

In footnote 4 at page 11 of the Petition, plaintiff misstates the record when he argues that from 1972 forward, he was not allowed "to speak in union meetings." At trial, plaintiff's approach was that he could not speak as much or as often or as long or whenever he wished to speak. In fact, as an example, in answers to interrogatories plaintiff stated that, with respect to the two union meetings in dispute, "I spoke several times at both meetings" (Fourth Circuit joint appendix, pages 051-052).

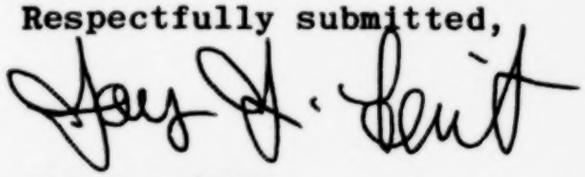
In footnote 6 of plaintiff's Petition, it is argued that the Fourth Circuit ignored the issues of (1) whether exhaustion was necessary on plaintiff's complaint that the union failed to advise the membership of its L.M.R.D.A. rights, and (2) his claim that he was denied financial information. The District Court specifically found that plaintiff and all members have had available to them from the union the union constitution and bylaws setting forth their rights as union members. These documents do not state that the rights are in fact also secured by federal law, but during oral argument, the Fourth Circuit expressed to plaintiff its difficulty in finding fault with this so long as the rights of the membership are set forth in the documents,and the documents are made available, as they were, to the membership.

There was no issue of financial information, since this issue was struck by the District Court prior to trial, as plaintiff's counsel well knows (see joint appendix in Fourth Circuit, pages 038, 176-177). No cross-appeal on any of the struck issues has been filed by plaintiff. During oral argument in the Fourth Circuit, the lack

of any cross-appeal by the plaintiff was noted by the Court to plaintiff's counsel.

The federal courts should not be assigned the impossible role of perpetual standby post-parliamentarians for union meetings, bypassing the mandate and wisdom of the statutory exhaustion requirement in 29 U.S.C. Sec. 411(a)(4). Review is unwarranted, and plaintiff's petition should be denied.

Respectfully submitted,



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